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20 Attorneys for Plaintiff Augme Technologies, Inc., a Delaware Corporation

21 **UNITED STATES DISTRICT COURT**

22 **SOUTHERN DISTRICT OF NEW YORK**

23 AUGME TECHNOLOGIES, INC., a
24 Delaware corporation,

25 Plaintiff,

26 v.

27 TACODA LLC, a Delaware Corporation,
28 and AOL, INC., a Delaware Corporation;

Defendants.

CASE NO. 1:07-cv-07088-CM-GWG

**PLAINTIFF'S ANSWER TO DEFENDANTS'
COUNTERCLAIMS IN ITS ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Before: Honorable Magistrate Judge Gabriel W.
Gorenstein

**PLAINTIFF'S ANSWER TO
DEFENDANTS' COUNTERCLAIMS**

AUGME TECHNOLOGIES, INC.'S ANSWER TO COUNTERCLAIMS

1 Counterclaim Defendant Augme Technologies, Inc. ("Augme") by its attorneys answers
 2 the counterclaims ("Counterclaims") set forth in Counterclaim Plaintiffs Tacoda, LLC and
 3 AOL, Inc.'s ("Counterclaim Plaintiffs") Answer to Second Amended Complaint ("Answer") as
 4 follows:

COUNTERCLAIMS

- 5 29. Augme admits that paragraph 29 of the Counterclaims states allegations for declaratory
 6 judgment against Augme as a counterclaim defendant.
- 7 30. Augme admits that the Counterclaims are for declaratory judgment alleging
 8 noninfringement and invalidity of U.S. Patent No. 6,594,691 ("the '691 Patent") and U.S.
 9 Patent No. 7,269,636 ("the '636 Patent").

THE PARTIES

- 10 31. Augme admits that paragraph 31 of the Counterclaims state facts admitted in Paragraph
 11 2 of the Answer.
- 12 32. Augme is without knowledge or information sufficient to form a belief as to the truth of
 13 the allegations of Paragraph 32 of the Counterclaims, and therefore denies the same.
- 14 33. Augme admits Paragraph 33 of the Counterclaims.

JURISDICTION

- 15 34. With respect to the first sentence of Paragraph 34 of the Counterclaims, Augme admits
 16 that the Counterclaims bring an action under 28 U.S.C. § 2201 involving allegations of
 17 noninfringement and invalidity of the '691 Patent and the '636 Patent under 35 U.S.C. § 101 ET
 18 SEQ. With respect to the second sentence of Paragraph 34 of the Counterclaims, Augme
 19 further admits that this action arises under 35 U.S.C. § 101 et seq. and that this Court has
 20 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Augme otherwise denies
 21 all other allegations in Paragraph 34 of the Counterclaims.
- 22 35. Augme admits Paragraph 35 of the Counterclaims.
- 23 36. Augme admits Paragraph 36 of the Counterclaims.

BACKGROUND

- 1 37. Augme refers to and incorporates herein the responses of Paragraphs 29-36 above, as
 2 though fully asserted herein.
 3
 4 38. Augme admits Paragraph 38 of the Counterclaims.
 5
 6 39. Augme admits Paragraph 39 of the Counterclaims.

COUNT 1**Declaratory Judgment of Noninfringement of U.S. Patent No. 6,594,691**

- 7 40. Augme refers to and incorporates herein the responses of Paragraphs 29-39 above, as
 8 though fully asserted herein.
 9
 10 41. Augme admits Paragraph 41 of the Counterclaims.
 11 42. Augme admits Paragraph 42 of the Counterclaims.
 12 43. Augme denies all allegations in Paragraph 43 of the Counterclaims.
 13 44. Paragraph 44 of the Counterclaims is a request for declaratory judgment to which no
 14 response is required. To the extent that any response is required, Augme admits that
 15 Counterclaim Plaintiffs are seeking declaratory judgment from this Court and that this
 16 declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28
 17 U.S.C. § 2201, but Augme otherwise denies all other allegations in Paragraph 44 of the
 18 Counterclaims, including those alleging that Counterclaim Plaintiffs are not infringing the '691
 19 Patent and those alleging that Counterclaim Plaintiffs are entitled to any declaratory judgment
 thereto or other declaratory relief.

COUNT 2**Declaratory Judgment of Invalidity and Unenforceability of U.S. Patent No. 6,594,691**

- 21 45. Augme refers to and incorporates herein the responses of Paragraphs 29-44 above, as
 22 though fully asserted herein.
 23
 24 46. Augme denies all allegations in Paragraph 46 of the Counterclaims.
 25
 26 47. Paragraph 47 of the Counterclaims is a request for declaratory judgment to which no
 27 response is required. To the extent that any response is required, Augme admits that
 28 Counterclaim Plaintiffs are seeking declaratory judgment from this Court and that this

1 declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28
 2 U.S.C. § 2201, but Augme otherwise denies all other allegations in Paragraph 47 of the
 3 Counterclaims, including those alleging the ‘691 Patent to be invalid and/or unenforceable.
 4

COUNT 3

Declaratory Judgment of Noninfringement of U.S. Patent No. 7,269,636

5 48. Augme refers to and incorporates herein the responses of Paragraphs 29-47 above, as
 6 though fully asserted herein.
 7

8 49. Augme admits that the USPTO duly issued Patent No. 7,269,636, but denies that the
 9 title of the patent is as stated in Paragraph 49 of the Counterclaims.
 10

11 50. Augme admits Paragraph 50 of the Counterclaims.
 12

13 51. Augme denies all allegations in Paragraph 51 of the Counterclaims.
 14

15 52. Paragraph 52 of the Counterclaims is a request for declaratory judgment to which no
 16 response is required. To the extent that any response is required, Augme admits that
 17 Counterclaim Plaintiffs are seeking declaratory judgment from this Court and that this
 18 declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28
 19 U.S.C. § 2201, but Augme otherwise denies all other allegations in Paragraph 52 of the
 20 Counterclaims, including those alleging that Counterclaim Plaintiffs are not infringing the ‘636
 21 Patent and those alleging that Counterclaim Plaintiffs are entitled to any declaratory judgment
 22 thereto or other declaratory relief.
 23

COUNT 4

Declaratory Judgment of Invalidity and Unenforceability of U.S. Patent No. 7,269,636

24 53. Augme refers to and incorporates herein the responses of Paragraphs 29-52 above, as
 25 though fully asserted herein.
 26

27 54. Augme denies all allegations in Paragraph 54 of the Counterclaims.
 28

29 55. Paragraph 55 of the Counterclaims is a request for declaratory judgment to which no
 30 response is required. To the extent that any response is required, Augme admits that
 31 Counterclaim Plaintiffs are seeking declaratory judgment from this Court and that this
 32 declaratory action proceeds under Rule 57 of the Federal Rules of Civil Procedure and 28
 33

1 U.S.C. § 2201, but Augme otherwise denies all other allegations in Paragraph 55 of the
2 Counterclaims, including those alleging the ‘636 Patent to be invalid and/or unenforceable.
3

4 Dated: September 23, 2010

SHAUB & WILLIAMS LLP

5 /s/David R. Shaub/

6 David R. Shaub,
7 Attorneys for Plaintiff and Counterclaim
8 Defendant,
AUGME TECHNOLOGIES, INC.

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